



## Exempt Action Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC25-196
<b>Regulation title</b>	General VPDES Permit For Non-contact Cooling Water Discharges of 50,000 Gallons Per Day or Less
<b>Action title</b>	Amend and Reissue Existing Regulation
<b>Document preparation date</b>	March 12, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The General Virginia Pollutant Discharge Elimination System (VPDES) Permit For Non-contact Cooling Water Discharges of 50,000 Gallons Per Day or Less has existed since 1998. This regulation amendment will reissue the existing general permit which expires on March 1, 2013. This general permit establishes effluent limitations and monitoring requirements for point source discharges of 50,000 gallons per day or less of non-contact cooling water and cooling equipment blow down to surface waters. The effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. The general permit regulation is being reissued in order to continue making it available as a permitting option for this type of discharger. The proposed changes to the regulation were made to make this general permit similar to other general permits issued recently and in response to Technical Advisory Committee (TAC) suggestions and staff requests to clarify and update permit limits and conditions.

Substantive changes proposed are: (1) added two reasons authorization to discharge would not be granted; (2) added language to allow for 'administrative continuation' of permit coverage; (3) added effluent limitations for copper, zinc and silver for both freshwater and saltwater receiving streams; (4) added special conditions for: the required number of significant digits for reporting monitoring results; a

requirement to implement measures and controls consistent with a TMDL requirement when the facility is subject to an approved TMDL; the notice of termination requirements; a requirement to control discharges as necessary to meet water quality standards; and the permittee's responsibility to comply with any other federal, state or local statute, ordinance or regulation; and (5) modified the MS4 notification special condition to require the permittee to submit discharge monitoring reports to the owner of the municipal storm sewer system (MS4) if they discharge to the MS4.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

This proposed regulatory action is needed in order to amend and reissue the existing VPDES general permit for point source discharges of 50,000 gallons per day or less of non-contact cooling water and cooling equipment blow down to surface waters, which expires on March 1, 2013. The goal of the proposed regulation is to continue the general permit which establishes standard language for control of point source discharges from non-contact cooling water systems through effluent limitations, monitoring requirements and special conditions to ensure protection of the environment.

**Substance**

*Please briefly identify and explain the new substantive provisions (for new regulations), the substantive changes to existing sections, or both where appropriate.*

This general permit establishes effluent limitations and monitoring requirements for point source discharges from non-contact cooling water facilities. As with an individual VPDES permit, the effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. The primary issue that needs to be addressed is that the existing general permit expires on March 1, 2013 and must be reissued in order to continue making general permit coverage available for non-contact cooling water facilities after that date.

The substantive changes to existing sections of the regulation are as follows:

1. Section 50 - Authorization to Discharge.

- Added two reasons why authorization to discharge under this permit would not be granted: (1) the discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; and (2) the discharge is not consistent with the assumptions and requirements of an approved TMDL.
- Added language to allow for 'administrative continuation' of permit coverage for existing permitted facilities that file complete registration statements prior to the existing permit's expiration, and that are in compliance with the existing permit.

2. Section 70 - General Permit.

- Added effluent limitations for copper, zinc and silver for both freshwater and saltwater receiving streams. The existing permit requires monitoring only for these metals. The effluent limits would become effective after the permit's fourth year.
- Added five new special conditions: (1) the required number of significant digits for reporting monitoring results; (2) a requirement to implement measures and controls consistent with a TMDL requirement when the facility is subject to an approved TMDL; (3) the notice of termination requirements; (4) a requirement to control discharges as necessary to meet water quality standards; and (5) the permittee's responsibility to comply with any other federal, state or local statute, ordinance or regulation.
- Modified the MS4 notification special condition to require the permittee to submit discharge monitoring reports to the owner of the municipal storm sewer system (MS4) if they discharge to the MS4.

These changes were made to make this general permit similar to other general permits issued or reissued recently, and in response to staff requests to clarify and update permit limits and conditions.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

The primary issue that needs to be addressed is that the existing cooling water general permit expires on March 1, 2013 and must be reissued in order to continue making it available after that date. The primary advantage to the public and to the agency of implementing the amended provisions are that a VPDES general permit will continue to be available to facilities discharging non-contact cooling water, allowing them an efficient way to be permitted to discharge to surface waters. The regulatory action poses no disadvantages to the public or to the Commonwealth.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements, or no requirements that exceed applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

No locality is particularly affected by the proposed regulation.

**Public Participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts of the regulation on the regulated community and the impacts of the regulation on farm or forest land preservation.*

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email or fax to Burt Tuxford, DEQ, P.O. Box 1105, Richmond, VA 23218; telephone no. 804/698-4086; fax no. 698-4032; email [burton.tuxford@deq.virginia.gov](mailto:burton.tuxford@deq.virginia.gov). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by DEQ by the close of the comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

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The proposed permit contains effluent limits for copper, zinc and silver for the last year of the permit term. These new limits may require some permittees to install treatment to meet the new limitations.

It is not anticipated that the proposed amendments will impart any additional economic impact on the owners of facilities discharging non-contact cooling water. There are currently 30 treatment works registered under this general permit.

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

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These discharges are point sources of pollutants and thus are subject to regulation under the VPDES permit program. There are two alternatives for compliance with federal and state requirements to permit such discharges. One is to issue individual VPDES permits to each discharger. The other is to reissue the general VPDES permit to cover this category of discharger. A general VPDES permit is the least burdensome, intrusive and costly alternative to achieve the purpose of the federal and state regulations, and to protect the water quality of the Commonwealth.

### Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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The proposal includes an allowance for continuation of permit coverage in instances where an owner has submitted a timely registration and is in compliance with their existing permit. This will allow the permittee to legally and safely discharge if permit coverage is not granted by the Board prior to the existing permit's expiration date.

### Public comment

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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Committer	Comment	Agency response
	No comments were received.	

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability, including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulation will have no direct impact on the institution of the family or family stability.